

2/8/2005

THIS OPINION IS NOT CITABLE
AS PRECEDENT OF
THE TTAB

UNITED STATES PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Anything Goes, Inc.

Serial No. 76530298

Ezra Sutton, Esq. for Anything Goes, Inc.

Michael Webster, Trademark Examining Attorney, Law Office
102 (Thomas Shaw, Managing Attorney).

Before Hanak, Hairston, Chapman, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Anything Goes, Inc. (applicant) seeks to register the
mark HT for "mail order catalog services featuring jewelry
and online retail services featuring jewelry." The
application was filed on July 7, 2003 with a claimed first
use date of January 2002.

Citing Section 2(d) of the Trademark Act, the
Examining Attorney refused registration on the basis that
applicant's mark, as applied to applicant's services, is

likely to cause confusion with the mark HT enclosed within a triangle, previously registered for "jewelry made of precious metals with or without precious or semi-precious stones." Registration No. 1,771,358.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the Examining Attorney filed briefs. Applicant did not request an oral hearing.

In any likelihood of confusion analysis two key, although not exclusive, considerations are the similarities of the marks and the similarities of the goods or services. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976) ("The fundamental inquiry mandated by Section 2(d) goes to the cumulative effect of differences in the essential characteristics of the goods [or services] and differences in the marks.").

Considering first applicant's services and registrant's goods, we find that they are extremely closely related. Applicant seeks to register its mark for "mail order catalog services featuring jewelry and online retail store services featuring jewelry." The goods of the cited registration are "jewelry made of precious metals with or without precious or semi-precious stones." As has been stated repeatedly, "it is well recognized that confusion in

trade is likely to occur from the use of similar or the same marks for goods and products on the one hand, and for services involving those goods or products on the other.” Steelcase, Inc. v. Steelcare, Inc., 219 USPQ 433, 434 (TTAB 1983) (Confusion is likely between STEELCARE for furniture refinishing services and STEELCASE for office furniture). See also In re Hyper Shoppes, Inc., 837 F.2d 463, 6 USPQ2d 1025 (Fed. Cir. 1988) and 3 J. McCarthy, McCarthy on Trademarks and Unfair Competition, Section 24:25 at pages 24-44 to 24-45 (4th ed. 2004).

Put quite simply, applicant’s mail order catalog and online retail services featuring jewelry are extremely closely related to jewelry made of precious metals with or without precious or semi-precious stones, the goods of the cited registration.

Turning to a consideration of the marks, we note at the outset that when applicant’s services are extremely closely related to the goods of the cited registration as is the case here, “the degree of similarity [of the marks] necessary to support a conclusion of likely confusion declines.” Century 21 Real Estate Corp. v. Century Life of America, 970 F.2d 874, 23 USPQ2d 1698, 1700 (Fed. Cir. 1992).

Marks are compared in terms of visual appearance, pronunciation and connotation, if any. In terms of pronunciation, the two marks are identical. Both would be pronounced simply as HT. Obviously, consumers would not pronounce the cited mark as "HT and triangle design."

In terms of visual appearance, we recognize that because the letters HT in the cited mark are surrounded by a triangle, the two marks are somewhat different. However, the design in the cited mark is a very common geometric shape, namely, a plain, non-stylized triangle. It is long been held that "ordinary geometric shapes" such as circles, triangles and squares do very little to distinguish a word mark lacking such an ordinary geometric shape (applicant's mark) from an identical word mark containing such an ordinary geometric shape (registrant's mark). 1 J. McCarthy, McCarthy on Trademarks and Unfair Competition Section 7:33 at page 7-56 (4th ed. 2004).

In sum, given the fact that applicant's services are extremely closely related to the goods of the cited registration and the additional fact that applicant's mark is identical in terms of pronunciation to the registered mark, we find that there exists a likelihood of confusion. Of course, it need hardly be said that to the extent that there are any doubts on the issue of likelihood of

Ser. No. 76530298

confusion, we are obligated to resolve such doubts in favor of the registrant. Hyper Shoppes, 6 USPQ2d at 1027.

Decision: The refusal to register is affirmed.